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February 12, 2007

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: November 3, 2006

Case Number: TSO-0450

This Decision concerns the eligibility of xxxxxxxxx (hereinafter "the individual") for continued access authorization. The regulations governing the individual's eligibility are set forth at 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." This Decision will consider whether, based on the testimony and other evidence presented in this proceeding, the individual's access authorization should be restored. For the reasons detailed below, it is my decision that the individual's access authorization should be restored.

I. BACKGROUND

On August 11, 2006, the DOE issued a notification letter to the individual. Attached to the notification letter was a statement entitled "Information creating a substantial doubt regarding eligibility for an Access Authorization" (hereinafter referred to as the "information statement"). The information statement indicates that the individual was arrested for Driving Under the Influence of alcohol (DUI) during September 1994 and on February 3, 1998 and March 10, 2005. On April 21, 2006, the individual was evaluated by a DOE consulting psychiatrist. In his evaluation report the DOE consulting psychiatrist diagnosed the individual with alcohol abuse.

The notification letter finds that the alcohol incidents and the diagnosis of alcohol abuse by a DOE consulting psychiatrist create a security concern under Criterion J. 10 C.F.R. §710.8(j). The notification letter informed the individual that he was entitled to a hearing before a hearing officer in order to respond to the information contained in the notification letter. The individual requested a hearing. I was appointed to serve as the hearing officer. In accordance with 10 C.F.R. § 710.25(e) and (g), I convened a hearing in this matter (the hearing).

In his opening statement at the hearing, the individual indicated that the testimony at the hearing would demonstrate that he has been abstinent since March 11, 2005, that since March 14, 2005 he has been attending AA on a regular basis and that he attended an eight week alcohol education program during the summer of 2005. Transcript of Hearing (Tr.) at 8. Below is a summary of the testimony at the hearing.

## II. HEARING

### A. AA members

The individual's AA sponsor testified that he is an alcohol counselor and has been a member of AA for 25 years. Tr. at 14. He has known the individual for two years and has been the individual's rehabilitation counselor as well as his AA sponsor. Tr. at 14. The sponsor testified that in the summer of 2005 the individual participated in an eight week counseling program at the counseling center at which he works. The individual was "a model client" and was very conscientious about following directions and taking suggestions. Tr. at 15. The sponsor also testified that the individual was a very active participant in AA. Tr. at 15. For the last two years the individual has attended 3 to 4 AA meeting a week and has taken an active leadership role in the AA process. Tr. at 17.

He concluded by testifying that he believes the individual wants to change his life and that the individual's risk of relapse is very low. Tr. at 16-17.

A second AA member testified that he has been a member of AA for five years. Tr. at 82. He sees the individual every Sunday at the Sunday evening AA meeting. He has also attended numerous other AA meetings with the individual. Tr. at 83. He testified that the individual actively participates in the meetings. Tr. at 84. He believes the individual is committed to his recovery and he believes the individual has significantly changed his outlook towards life. Tr. at 83.

### B. The Individual's Supervisors

The individual's first supervisor testified that he has known the individual since 1993. Tr. at 28. He supervised the individual between 1993 and 1999. Tr. at 29. He testified that the individual is a very good worker. Tr. at 29. He has known the individual as a casual, social friend through the school activities of their children since 2001. Tr. at 31. He has never seen the individual in a situation in which alcohol was served. Tr. at 32.

The individual's second supervisor testified that he has known the individual since 1998 and has been his supervisor for the last year. Tr. at 49. He testified that the individual has never had any on the job alcohol problems, nor has he had any problems with job attendance. Tr. at 50. He believes the individual is honest and trustworthy. Tr. at 50.

### C. The Individual's Co-workers

The first co-worker testified that he has worked with the individual for 17 years. Tr. at 33. He often sees the individual in social situations, including dining at a local restaurant and at their bowling league. Tr. at 35. Prior to March 2005, he often observed the individual consume between 2 and 5 beers at the restaurant and bowling alley. Tr. at 37. Since March 2005, he continues to see the individual at the same locations. However, he has not seen the individual consume alcohol. Tr. at 37.

The second co-worker testified that he has known the individual for ten years and has worked with him for 10 years. Tr. at 42. He believes the individual is trustworthy. Tr. at 45.

#### D. The Individual's Wife

The individual's wife testified that they have been married for six years. Tr. at 66. She testified that the individual has not consumed alcohol since March 2005 and that AA has had a significant effect on her husband's life. Tr. at 67. Since March 2005 they have been at a number of social events in which alcohol has been served. On each of those occasions, the individual did not consume alcohol and made it clear that he had no intention of consuming alcohol. Tr. at 67. She believes that her marriage is much stronger now that the individual does not consume alcohol. Tr. at 68. She does not believe the individual will ever again consume alcohol. Tr. at 80.

#### E. The Individual's Wife's Close Friend

The close friend testified that she has known the individual's wife for 12 years. Tr. at 56. The close friend's previous husband was alcohol dependent and she is familiar with the problems associated with being married to a person with alcohol problems. Tr. at 62. She testified that she is a "sounding board and a friend" to the individual's wife and that she and the individual's wife are "just close." Tr. at 63. Prior to March 2005, she had frequent discussions with the individual's wife about the individual's alcohol consumption. Tr. at 57. Prior to March 2005, the individual's wife had significant concerns about the level of her husband's alcohol consumption. Tr. at 57.

The close friend testified that since March 2005 the individual has not consumed alcohol. Tr. at 60. She believes the individual actively attends AA meetings. She has noticed the individual is more positive and is at home more often. Tr. at 60. She testified that one of the changes she has noticed is that the individual is now able to talk directly to her and to look her in the eye. Tr. at 61. She believes if the individual were to resume consuming alcohol his behavior would change and she would know he was again consuming alcohol. Tr. at 60.

#### F. The DOE Consulting Psychiatrist

The DOE consulting psychiatrist listened to the testimony on the telephone and testified at the end of the hearing. He indicated there is always a risk of relapse with alcohol abuse. Tr. at 100. Based on what he heard about the individual's abstinence from alcohol and from his experience with AA, he believes the individual has demonstrated that his risk of relapse has been significantly reduced. Tr. at 101. He testified that he was unable to provide a more specific evaluation of the individual's risk of relapse. Tr. at 101.

### III. REGULATORY STANDARD

In order to frame my analysis, I believe that it will be useful to discuss briefly the respective requirements imposed by 10 C.F.R. Part 710 upon the individual and the hearing officer.

#### A. The Individual's Burden of Proof

It is important to bear in mind that a DOE administrative review proceeding under this Part is not a criminal matter, where the government would have the burden of proving the defendant guilty beyond a reasonable doubt. Once a security concern has been raised, the standard in this proceeding places the burden of proof on the individual to bring forth persuasive evidence concerning his eligibility for access authorization. 10 C.F.R. §§ 710.21(b)(6), 710.27(b), (c), (d).

This burden is designed to protect national security interests. The hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). The individual must come forward at the hearing with evidence to convince the DOE that restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a).

This is not an easy evidentiary burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring an access authorization. See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for the granting of access authorizations indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), cert. denied, 499 U.S. 905 (1991) (strong presumption against the issuance of an access authorization). Consequently, it is necessary and appropriate to place the burden of persuasion on the individual in cases involving national security issues. In addition to her own testimony, the individual in these cases is generally expected to bring forward witness testimony and/or other evidence which, taken together, is sufficient to persuade the hearing officer that restoring access authorization is clearly consistent with the national interest. *Personnel Security Hearing* (Case No. VSO-0002), 24 DOE ¶ 82,752 (1995).

#### B. Basis for the Hearing Officer's Decision

In a personnel security case under Part 710, it is my role as the hearing officer to issue a decision as to whether granting an access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). Part 710 generally provides that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). I must examine the evidence in light of these requirements, and assess the credibility and demeanor of the witnesses who gave testimony at the hearing.

### IV. ANALYSIS

The testimony at the hearing by the individual, his wife, their friends and the AA member convinced me and the DOE consulting psychiatrist that the individual has been abstinent since March 11, 2005. Therefore on the date of the hearing the individual had been abstinent for 22 months. The question before me is whether that period of abstinence is sufficient to mitigate the security concern related to the diagnosis of alcohol abuse.

I believe the individual has clearly committed himself to abstinence. His wife, friends and AA members are all aware of his commitment to abstinence. I believe his wife, friends and his fellow AA members will support the individual's efforts to maintain his abstinence. I believe he is committed to the AA precepts. I agree with the DOE consulting psychiatrist that the individual's commitment to AA and his 22 months of abstinence has reduced his risk of his relapse. I find that the risk of relapse is now at an acceptable level with respect to the DOE's Criterion J security concern. Accordingly, I am persuaded that the individual has adequately mitigated the DOE's Criterion J security concern. See Personnel Security Hearing (Case No. TSO-0320), 29 DOE ¶ 82,920 (2006).

#### V. CONCLUSION

I have concluded that the individual has mitigated the DOE security concerns under Criterion J of 10 C.F.R. § 710.8. In view of the record before me, I am persuaded that restoring the individual's access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. Accordingly, I find that the individual's access authorization should be restored.

The review procedures applicable to proceedings under Part 710 were revised effective September 11, 2001. 66 Fed. Reg. 47061 (September 11, 2001). Under the revised procedures, the review is performed by an Appeal Panel. 10 C.F.R. § 710.28(b)-(e).

Thomas L. Wieker  
Hearing Officer  
Office of Hearings and Appeals

Date: February 12, 2007